



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**JUN 27 2013**

**VIA FIRST CLASS MAIL**

Chris K. Gober, Esq.  
Gober Hilgers PLLC  
2101 Cedar Springs Road  
Suite 1050  
Dallas, TX 75201

RE: MUR 6600  
Dean Heller, et al.

Dear Mr. Gober:

On July 5, 2012, the Federal Election Commission notified your clients, Dean Heller, Heller for Senate and Chrissie Hastie in her official capacity as treasurer (the "Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On June 24, 2013, based upon the information contained in the complaint, and information provided by your clients, the Commission decided to dismiss the matter and close its file. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact Frankie D. Hampton, the paralegal assigned to this matter, at (202) 694-1650.

Sincerely,

Anthony Herman  
General Counsel

BY: Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination and  
Legal Administration

Enclosure  
Factual & Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Dean Heller  
Heller for Senate  
Chrissie Hastie, as treasurer

**MUR 6600**

**I. INTRODUCTION**

This matter was generated by a complaint filed by Roberta Lange, Chair of the Nevada State Democratic Party, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Heller for Senate and Chrissie Hastie, as treasurer (the "Committee"). It was scored as a low-rated matter under the Enforcement Priority System, a system by which the Federal Election Commission ("Commission") uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

In this matter, the Complainant, Roberta Lange, Chair of the Nevada State Democratic Party, alleges that Dean Heller, and Heller for Senate and Chrissie Hastie in her official capacity as treasurer (the "Committee"), began to air a broadcast television advertisement ("ad") on or about June 17, 2012, that did not include a proper disclaimer consistent with the "stand by your ad" requirements of the Act.<sup>1</sup> Compl. at 1. Specifically, the sworn Complaint alleges that the ad failed to include a written disclaimer clearly stating that Heller had approved the communication. See 2 U.S.C. § 441d(d)(1)(B)(iii); 11 C.F.R. § 110.11(c)(3)(iii). *Id.* at 1-2. The Complaint acknowledges that a written disclaimer at the conclusion of the ad states "Paid for by: Heller for

<sup>1</sup> The Complainant provides a link to the ad at issue: [http://www.youtube.com/watch?v=AMl\\_6XYNLKA](http://www.youtube.com/watch?v=AMl_6XYNLKA), but attempting to visit the link results in an error message indicating that "this video is unavailable."

1 Senate," but alleges that no written statement appears identifying the candidate or noting that  
2 Heller approved the communication. *Id.* at 1.

3 The Respondents acknowledge that the ad in question did not include an appropriate  
4 written approval statement. Resp. at 2. Respondents assert, however, that the ad complied with  
5 two of the three disclaimer requirements for television advertisements as described in 11 C.F.R.  
6 § 110.11(c)(3): 1) the ad "must state that it was paid for by the candidate's campaign;" and 2)  
7 the ad "must contain the voice of the candidate, accompanied by a picture of the candidate,  
8 stating that he or she approved the advertisement." *Id.* at 1. Respondents also state that there  
9 could be no confusion that the ad was approved by Heller, as the candidate's name, website  
10 address, Facebook page, and Twitter accounts were each displayed in writing multiple times  
11 during the advertisement. *Id.* at 1-2. Additionally, Respondents state that the entire  
12 advertisement consists of video of the candidate speaking directly to the camera. *Id.* at 2.

13 The Respondents note that the ad in question was replaced with a newer version of the  
14 advertisement with the correct disclaimer less than 24 hours after Committee staff learned of the  
15 error. Resp. at 2. Respondents also state that the Committee instituted new processes and  
16 procedures for approval of advertisements, including having them reviewed by legal counsel  
17 prior to distribution to ensure compliance with Commission regulations. *Id.*

18 **B. Legal Analysis**

19 The Act requires that whenever a public communication is authorized and financed by a  
20 candidate or his or her committee, the communication must include a disclaimer notice that  
21 clearly states the communication has been paid for by the authorized political committee.  
22 2 U.S.C. § 441d(a)(1); 11 C.F.R. § 110.11(b)(1). Furthermore, under the Act's "stand by your

1 ad" provisions,<sup>2</sup> a television communication paid for or authorized by a candidate's principal  
2 campaign committee must include an oral statement by the candidate that identifies the candidate  
3 and states that the candidate approved the communication. 2 U.S.C. § 441d(d)(1)(B); 11 C.F.R.  
4 § 110.11(c)(3)(ii). A "similar" statement must also appear in writing at the end of the  
5 communication in a clearly readable manner with a reasonable degree of color contrast between  
6 the background and the printed statement, for a period of at least four seconds. 2 U.S.C.  
7 § 441d(d)(1)(B)(ii); 11 C.F.R. § 110.11(c)(3)(iii). The Commission has determined that  
8 television advertisements, which only include a written statement that it was paid for by the  
9 committee and a verbal statement of approval by the candidate and do not include a written  
10 statement of the candidate's approval, do not meet the "stand by your ad" requirements. *See*  
11 MUR 6565 (Blaha for Congress) (the Commission concluded that a written statement of  
12 approval by the candidate was required on television campaign advertisements); *see also* MUR  
13 6070 (Lyle Larson); MUR 5834 (Darcy Burner); MUR 5629 (Newberry).

14 Although the ad did not contain the required disclaimers as required under  
15 2 U.S.C. § 441d(d)(1)(B) and 11 C.F.R. § 110.11(c)(3)(iii), this matter does not warrant  
16 the further use of Commission resources.<sup>3</sup> Here, based on the information supplied in the

<sup>2</sup> This is "colloquially known as a 'stand by your ad' requirement because it directly associates the candidate with the message he or she has authorized." Advisory Op. 2009-10 (Metro Networks).

<sup>3</sup> The Complainant alleges that the ad without proper disclaimers began to air on June 17, 2012, and the Committee asserts that it was replaced with a version of the advertisement with the correct disclaimer less than 24 hours after the Committee's staff learned of the error. The Committee's July Quarterly Report, filed on July 17, 2012, shows that the Committee made four disbursements totaling \$268,561.35 for "Media" during the relevant period: one to Autumn Productions for \$5,419.38 on June 4, 2012; and three to Strategic Media Services Inc., \$27,265 on June 13, 2012, \$130,283 on June 15, 2012, and \$105,594 on June 21, 2012. The Committee's total disbursements for the reporting period were \$586,306.50. There is no available information that points to the amount that was spent on the ad in question. The Heller for Senate YouTube channel, located at <http://www.youtube.com/DeanHeller>, contains only one advertisement that was published during the July Quarterly reporting period. This advertisement, "Joh (Dean Heller TV Ad)," is dated June 21, 2012, and can be viewed at [http://www.youtube.com/watch?v=h6L\\_YuDSRfTO](http://www.youtube.com/watch?v=h6L_YuDSRfTO).

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1 Complaint and Response, it appears that the advertisement contained sufficient information to  
2 clearly identify who paid for it, as well as an adequate spoken message of approval by the  
3 candidate. In prior matters involving missing written candidate approval statements where the  
4 communications otherwise appear to have contained sufficient identifying information to prevent  
5 the public from being misled as to who paid for them, the Commission has dismissed the matters  
6 as an exercise of prosecutorial discretion. See MUR 6565 (Blaha for Congress) (the Commission  
7 exercised prosecutorial discretion and dismissed when candidate failed to include a written  
8 statement of approval in a televised commercial but included a verbal statement of approval and  
9 written statement of who paid); see also MUR 5834 (Darcy Burner); but see MUR 5629  
10 (Newberry) (the Commission found reason to believe but took no further action).

11 In this case, the public was unlikely to have been misled as to whether Heller approved  
12 the message because the advertisement consisted of the candidate speaking directly to the camera  
13 and concluded with a verbal disclaimer that the ad was paid for by the Committee. Moreover, it  
14 appears that the Respondents took quick remedial action once the omission was discovered and  
15 instituted measures to ensure future compliance in this area. Therefore, in furtherance of its  
16 priorities, the Commission exercised its prosecutorial discretion and dismissed this matter  
17 pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).